

ENTERED
September 28, 2018
David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA, §
§
Plaintiff-Respondent, §
§
V. § CRIMINAL ACTION NO. H-12-774
§ CIVIL ACTION NO. H-16-2013
§
LAWRENCE TYLER, §
§
Defendant-Movant. §

ORDER ADOPTING RECOMMENDATION OF THE MAGISTRATE JUDGE

Pending is the Government's Responses to Defendant/§ 2255 Movant Lawrence Tyler's 28 U.S.C. § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 340); "Declaratory Judgment as to whether the Government h[as] the Right to Encumber, Seize and/or Dispose of Property" (Document Nos. 341 & 346); "Declaratory Judgment as to whether Lawrence T. Tyler is a U.S. Citizen and Whether he is Removable under 8 U.S.C. § 1101" (Document No. 342); Motion for Nunc Pro Tunc (Document No. 349), and "Motion under 18 U.S.C. § 3582(c)(2) based on Amendment of the United States Sentencing Guidelines" (Document No. 350). The Court has received from the Magistrate Judge an Amended Memorandum and Recommendation recommending Tyler's motions all be DENIED. Tyler has filed Objections (Document No. 390) to the Amended Memorandum and Recommendation. The Court, after having made a *de novo* determination of Tyler's motions, the Government's responses, the Magistrate Judge's Amended Memorandum and Recommendation, and Tyler's Objections thereto, is of the opinion that the findings and

recommendations of the Magistrate Judge should be and hereby are accepted by the Court. Therefore,

It is ORDERED and ADJUDGED for the reasons set forth in the Amended Memorandum and Recommendation of the United States Magistrate Judge signed and entered on July 25, 2018, which is adopted in its entirety as the opinion of the Court, that Tyler's § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 340), related Motions for Declaratory Judgment (Document Nos. 341, 342 and 346), Motion Nunc Pro Tunc (Document No. 349) and Motion to Reduce Sentence (Document No. 350) all are DENIED, and this § 2255 proceeding is DISMISSED WITH PREJUDICE. It is further

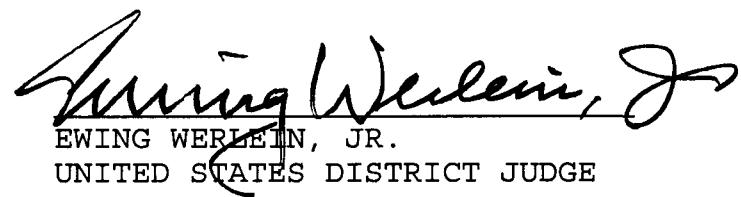
ORDERED that a certificate of appealability is DENIED. A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 120 S. Ct. 1595, 1603-1604 (2000) (internal quotations and citations omitted). Stated differently, where the claims have been dismissed on the merits, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 1604; Beazley v. Johnson, 242 F.3d 248, 263 (5th Cir.), cert. denied, 122

S.Ct. 329 (2001). When the claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. A district court may deny a certificate of appealability *sua sponte*, without requiring further briefing or argument. Alexander v. Johnson, 211 F.3d 895, 898 (5th Cir. 2000).

For the reasons set forth in the Amended Memorandum and Recommendation, which has been adopted as the opinion of the Court, the Court determines that reasonable jurists would not find debatable the substantive or procedural determinations made herein. Thus, a certificate of appealability is DENIED.

The Clerk will enter this Order and send copies to all parties of record.

Signed at Houston, Texas this 28th day of September 2018.


EWIN WERLEIN, JR.
UNITED STATES DISTRICT JUDGE